

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD

IN THE MATTER OF

STATE OF RHODE ISLAND,
DEPARTMENT OF HEALTH

AND

RI COUNCIL 94, ASFCME, AFL-CIO
(EE-3406)

CASE NOS: EE-3406 and EE-3575
Unit Clarification: Sr. Environmental
Health Food Specialist; Environmental
Health Food Specialist; and Environmental
Health Food Inspector

AND

RI Dept. of Health Professional Staff
Association/NEARI/NEA (EE-3575)

ORDER

Investigative Agent: Joan N. Brousseau

Petitioners: RI Council 94, AFSCME, AFL-CIO (EE-3406) and RI Dept. of Health
Professional Staff Association/NEARI/NEA (EE-3575)

Relief Sought:

- 1) Clarification of the appropriate bargaining unit(s) for the positions of Sr. Environmental Health Food Specialist, Environmental Health Food Specialist, and Environmental Health Food Inspector.

Date(s) of Informal Hearing(s), Parties Present and Documents Exchanged:

Date of Informal Hearing: February 8, 1999

Documents Submitted: Consent Agreement dated September 5, 1997 between RI Council 94, AFSCME, AFL-CIO and the Employer; job descriptions.

Date(s) of Field Investigation and Names and Titles of Interviewees:

- 1) **January 8, 2001:** Ms. Dorothy Lebeau and Ms. Kim Seit, Environmental Health Food Inspectors.
- 2) **April 5, 1999:** Ms. Rosa Lopez, Mr. John Bizon, Mr. Cosmo Manfredi, and Ms. Eileen Marshall, Environmental Health Food Specialists.
- 3) **April 7, 1999:** Ms. Josephine Orsi, Environmental Health Food Specialist.
- 4) **April 8, 1999:** Mr. John Florenzano, Mr. Richard Ferolito, Mr. Arthur DeBlasio, Environmental Health Food Specialists.
- 5) **April 16, 1999:** Ms. Paulette Bowers, Environmental Health Food Specialist.
- 6) **June 2, 1999:** Ms. Diane Rafferty, Sr. Environmental Health Food Specialist.
- 7) **June 18, 1999:** Mr. John Mullen and Mr. Stephen DiMaio, Sr. Environmental Health Food Specialists.
- 8) **March 12, 2001:** Mr. Ronald Lee, Chief Environmental Health Food Specialist

RELEVANT HISTORY OF THE BARGAINING UNITS

EE-3575: On May 6, 1998, the Rhode Island Department of Health Professional Staff Association/NEARI/NEA was certified to represent: "all professional employees in the Department of Health."

EE-3406: On June 4, 1987, RI Council 94, AFSCME, AFL-CIO, was certified to represent: "Employees in the Department of Health excluding nurses, professional and supervisory employees."

Administrative Procedure:

On March 23, 2001, after the field investigations were concluded, the Board's Administrator prepared a twenty (20) page written memorandum, outlining her discussions and findings regarding the petitions. The Employer and both Unions were provided with a copy of the written report, and all had a thirty (30) day period in which to submit additional written responses. On April 18, 2001, the Employer submitted a written response clarifying a few of the facts set forth in the Investigative Report. In reaching the decision herein, the Board considered the contents of the investigator's report and exhibits, the bargaining history of this unit and the Employer's written response.

DISCUSSION

Historically, the Department of Health had a series of positions assigned to Food Safety Inspections within the State of Rhode Island. These positions and their paygrades were: "Principal Sanitarian" (Grade 30), "Sr. Sanitarian" (Grade 26), "Sanitarian" (Grade 23) and "Senior Sanitary Aide" (Grade 20). In 1992, the federal government adopted a new food safety code that the states were required to implement. In order to fully implement the new food code, significant changes were made to Rhode Island law, and to the staffing structure within the Health Department.

The new positions were created after significant negotiation with, and input from, Council 94. The new titles are: Sr. Environmental Health Food Specialist, Environmental Health Food Specialist, and Environmental Health Food Inspector. During this time, Council 94 assumed and understood that it would continue to represent these positions after the restructuring. After the re-organization was complete, NEARI/NEA filed its request to accrete the new positions to its bargaining unit, which is comprised of professional positions. NEA argues that the new positions do not "automatically" become included within Council 94's bargaining unit, regardless of Council 94's understandings. NEA is correct; the new positions do not automatically become Council 94 positions, regardless of whether or not the same people hold the positions.

The certification for each bargaining unit must be examined to determine the composition for each bargaining unit. EE-3575 (NEA) is comprised only of professional positions within the Department of Health. EE-3406 specifically excludes professionals. Therefore, the sole question for the Board, in this case, is whether or not these positions are "professional". Once that

determination is made, the assignment of the positions to the appropriate unit follows, as a matter of law.

Professional employees, who are permitted to engage in collective bargaining are defined as

"any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science of learning customarily acquired by a prolonged course of specialized intellectual; instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine, manual, or physical processes; or

(b) any employee who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph a, and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a)."

The Board has a twenty page investigative report that discusses the specific duties and responsibilities of each position in significant detail. Although these positions do require some advanced course work and in some cases, a college degree, the Board finds that in fact, the work done by these positions is not "of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time". In fact, each of the employees has had to undergo a "standardization" process and then pass some type of certification, in order to retain their positions. In addition, in the Board's opinion, employees who are required to follow a rigid set of guidelines concerning their employment (the food safety code) are not able to demonstrate an exercise of discretion and judgment in their performance. The duties of these positions is primarily technical in nature, not professional. Therefore, the positions properly shall be, and are hereby accreted to the bargaining unit established by Case No. EE- 3406.

FINDINGS OF FACT

The Board's Agent conducted an appropriate field investigation and held an informal hearing, which was attended by all parties.

- 2) The positions of Sr. Environmental Health Food Specialist, Environmental Health Food Specialist, and Environmental Health Food Inspector all must be "standardized" under the State of Rhode Island's implementation of the "Food Safety Code"

CONCLUSIONS OF LAW

- 1) The positions of Sr. Environmental Health Food Specialist, Environmental Health Food Specialist, and Environmental Health Food Inspector are not professional in nature.

ORDER

- 1) The positions of Sr. Environmental Health Food Specialist, Environmental Health Food Specialist, and Environmental Health Food Inspector are not professional in nature, shall be and are hereby accreted to the bargaining unit established by Case No EE-3406.
- 2) Pursuant to R.I.G.L. 28-7-9 (d), the Rhode Island Department of Health Professional Staff Association/NEARI/NEA's petition to accrete the positions of Sr. Environmental Health Food Specialist, Environmental Health Food Specialist, and Environmental Health Food Inspector is hereby denied and dismissed.

RHODE ISLAND STATE LABOR RELATIONS BOARD

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Entered as an Order of the
Rhode Island State Labor Relations Board

Dated: January 9, _____, 2002

By: *Joan N. Brousseau*
Joan N. Brousseau, Administrator